

# **CAL FIRE's Native American Advisory Council**

## **Minutes of the August 16, 2018 Meeting**

### **CAL FIRE Sacramento Headquarters**

**(Recorded by Gerrit L. Fenenga)**

**Members Present:** Kevin Gaines, Bill Tripp, Gary Walker, Dore Bietz, Mike DeSpain (arrived 9:21)

**Members present via Webinar:** Ann Brierty, Tim Hayden, Chris Nejo on behalf of Robert Smith (Pala Tribe)

**Members Absent:** Ed Hadfield, Robert Smith (Chris Naho attended for him)

**Native American Heritage Committee Representative:** Debbie Treadway (arrived 9:57)

**CAL FIRE Personnel Present:** Matthew Reischman, Assistant Deputy Director Resource Protection and Improvement; Chris Browder, Deputy Chief, Environmental Protection and Archaeology Program Manager; Gerrit Fenenga, Senior State Archaeologist; Mike McGuirt, Senior State Archaeologist

**Guest:** Christina McDonald, North Fork Rancheria

#### **Call to Order: (9:05 am)**

- 1) Gary Walker, Acting Chair, opened meeting.
- 2) Roll Call
  - a. Four members physically present, three present on Web (=7). Quorum established.
- 3) Welcoming remarks and introductions; announcement of two new Council members (to replace no shows).
  - a. Dore Bietz, Tuolumne Band of Me-Wuk Indians.
  - b. Mike DeSpain, Buena Vista Rancheria (arrived later).

#### **Approval of Agenda**

- 1) C. Browder briefly reviewed the agenda and noted that Item 11 would take most of the time today. Item 11 is CAL FIRE's Native American Tribal Communities Relations Policy revisions and the Council members review of the revised document from the work of the last Council meeting.
- 2) Kevin Gaines made motion to approve; Dore Bietz seconded, all in favor, motion passed.

#### **Approval of Minutes from the April 18, 2018 Meeting:**

- 1) Bill Tripp asked for correction to Sections "I" and "M", indicating he is not sure he meant "legislative" as described in the minutes. Instead he said it was more about national level discussions concerning certain liability issues involving the National Cohesive Wildland Fire Management Strategy (NCWFMS) and the "3 Strategy Committees".

- a. This topic relates to the adoption of traditional Native American burning practices and Sections "I" and "M" are on pages 7-8 of the April NAAC meeting minutes.
- 2) Kevin Gaines made a motion to approve the minutes with corrections; Tim Hayden seconded. Voting was 5 ayes and 3 abstentions (from members absent last meeting). Motion passed.
- 3) Mike DeSpain arrived at 9:21.

**Report of the CAL FIRE Deputy Director:**

- 1) Matt Reischman, Assistant Deputy for Resource Protection and Improvement, reported for Helge Eng.
- 2) Fire Status update:
  - a. 11 fires currently burning, over 760,000 acres burned, 2000+ structures lost, approximately 12,500 firefighters assigned, and current red flag conditions.
  - b. Largest current fires were the Carr Incident (211,000 acres with 1000 residences lost) and the Mendocino Complex (River Incident-48,000 acres + Ranch Incident-306,000 acres = 315,000 acres total). Others included the Ferguson Incident and the Donnel fires in the Sierras.
- 3) Gerrit noted that while CAL FIRE archaeologists had been assigned to the Carr fire, none of us had been sent to the Mendocino Complex fires despite our concern and availability.
  - a. A short discussion followed highlighting problems archaeologists sometimes have getting assigned to wildfires.
- 4) Chief Reischman continued his report with a synopsis of other items:
  - a. Grants from the California Climate Initiative to promote fire prevention and forest health have amounted to \$170,000,000.
    - i. Including 142 grants for \$80,000,000 for fire prevention and 24 grants for \$91,000,000 for forest health projects.
  - b. Next round of grants is in October with \$160,000,000 in funding.
  - c. CAL FIRE is cooperating with the USFS "Good Neighbor Authority" on several projects.
    - i. Klamath National Forest (Craggy project)
      - 1. Will allow expedited timber sales on USFS lands with USFS administering the process, but using CAL FIRE staff to provide expertise and assistance.
    - ii. Stanislaus National Forest
      - 1. Rim Fire restoration project involving the Sierra Nevada Conservancy, CAL FIRE, and others.
      - 2. Widens authority to allow USFS to work on private lands.
      - 3. CAL FIRE staff will engage the private landowners.
    - iii. New arena for us.
  - d. Governor's Executive Order: "Forest Management Task Force"
    - i. Several working groups have been established.
    - ii. Not limited to tree mortality.
  - e. Legislature
    - i. CAL FIRE is regularly communicating with the legislature concerning fires and progress with the Forest Management Task Force.
  - f. State Forest Program

- i. On-going divesting of PG&E lands.
  - ii. Continues, not done deal yet.
  - iii. Important to CAL FIRE to add lands to the State Forest system.
- g. Questions?
  - i. Dore Bietz asked about SRA grants and her experience in Tuolumne County where tribes were not allowed to apply.
  - ii. Had to go through FIRE Safe Councils when Tribal Fee Lands are capable of management by tribes.
  - iii. She asked if this question has been raised.
    - 1. Matt replied that the process has changed and tribes are now eligible.
      - a. SRA program has ended; replaced with new funding sources from the California Climate Initiative (CCI).
      - b. No restrictions for tribes.
      - c. Interest is simply in showing benefits to SRA lands.
    - 2. Bill Tripp noted that previously tribes could apply for funding if they had an eligible partner and described a \$5 million grant awarded the Karuk for a project to the mid-Klamath Watershed Council for a Western Klamath Restoration Partnership project.
    - 3. Matt explained two different granting programs were at play.
  - iv. Dore spoke about the Tuolumne County Tree Mortality Task Force and GIS mapping on Tribal Trust and Tribal Fee lands.
    - 1. She stated she appreciated support from CAL FIRE.
    - 2. Matt noted the information was shared with CAL FIRE's FRAP program.
    - 3. Dore noted there were often issues with Agencies about the use of data.
  - v. Tim Hayden asked two questions:
    - 1. When will the first round of awards be announced?
    - 2. If a tribe was awarded in the first round, are they eligible for the 2<sup>nd</sup>?
      - a. Matt replied, yes if unsuccessful the first time or if the applicant wants to expand the first proposal.
      - b. He followed with "there is nothing to keep you from applying."
  - vi. Tim Hayden then asked "How are the tribes being involved in the Government Task Force?"
    - 1. Matt (or Chris Browder?) answered this was being coordinated through the Governor's Tribal Liaison Office.
      - a. The new director is Christina Snyder.
      - b. They are still in the process of establishing leaders.
      - c. An Incident Action Plan is being developed that will fit into existing working groups.
      - d. When it is finished, it will be circulated to concerned parties for review.
      - e. If tribes are interested, there should be no problems becoming involved.

2. Bill Tripp noted that Stewardship Agreements, such as the “Craggy Project” can add partners and this might be an opportunity to engage with tribes.
  - a. He also mentioned the new proposed strategy for improving forest conditions that is currently under federal review.
3. Matt Reischman spoke about these Stewardship Agreements that are included in the Master Agreement with the USFS Regions.
  - a. He said these are part of the Good Neighbor Authority and that tribes were eligible to apply.
  - b. Someone asked about the eligibility of non-federally recognized tribes.
    - i. Matt responded that it was important to build relationships with the State and that this was a new thing for us but we wanted to be flexible.
    - ii. He said we need further discussion about partnerships.
4. Matt added the Master Agreement applied to all State agencies through the Good Neighbor Authority, but that the BLM was not yet involved.

#### **Report of the CAL FIRE Archaeology Program**

- 1) Mike McGuirt described CAL FIRE archaeologists’ involvement with the Pawnee and County Fires and Gerrit Fenenga discussed the Carr Incident.
  - a. Local Native American tribes were consulted on each of these incidents.
  - b. Some Native American archaeological sites were effected by fire suppression on each of these fires and local tribes were involved in the subsequent mitigation of damage.
  - c. In each case, the resulting damage was not especially significant.
- 2) There was additional discussion about the lack of archaeologists on the Mendocino Complex and CAL FIRE’s process for assigning archaeologists to fire incidents.
  - a. Bill Tripp said his tribe does not have a reimbursement agreement with Cal OES, so they cannot respond to fires under state jurisdiction.
  - b. Gerrit and Mike DeSpain discussed their experience working together on the Moonlight Fire in Plumas County in 2006.
    - i. This was a Federal Fire so we were able to get them to fund Mike’s assignment, but he worked closely with Gerrit and CAL FIRE.
  - c. Chris Browder explained the nature of wildfires and CAL FIRE culture where we have no land base concerns, unlike the federal agencies or California State Parks.
    - i. He said we need to develop a framework that allows us to work with Native Americans on fires.
    - ii. This is the sort of thing the Council can put together.
  - d. Gerrit mentioned that protecting cultural or heritage resources have been one of the primary Incident Objectives on the Incident Action Plan for all recent wildfires.
    - i. This gives legitimacy to Native American involvement.
    - ii. Bill Tripp added we can add the Tribal Relations Policy to this as well.

### **Report of the Native American Heritage Commission**

- 1) Debbie Treadway joined meeting electronically at 9:57. She did not attend that April meeting because she was involved with fires.
- 2) Christina Snyder, the Governor's new Executive Director of the Governor's Tribal Liaison office, has now assigned her to attend the NAAC meetings.
- 3) There was a brief discussion was about the differences between Federally-recognized and non-recognized tribes.
  - a. Identifying Federal tribes is relatively clear, less so for non-recognized entities.
  - b. Debbie said the Commission can help with this.

### **Geographic Assignments of Native American Advisory Council Members**

- 1) At the January 31, 2018 meeting of the NAAC there was a lengthy discussion to determine how to best partition up the state of California for the purposes of the NAAC, especially to aid in communication and outreach to tribal groups throughout the state.
  - a. Debbie volunteered at that meeting to help prepare a map dividing the state up into manageable units that reflected Native cultural boundaries as well as other factors relevant to CAL FIRE and the needs of the NAAC.
  - b. The resulting map was created upon the basis of tribal divisions and CAL FIRE regional administrative units and was presented to the Council at the April 19<sup>th</sup> meeting.
    - i. State was divided into 3 segments, Northern, Central, and Southern sections.
    - ii. This is similar to the BIA which divides the 110 Federally-recognized tribes into 3 regions.
      1. This organizational map was approved by the Council at the last meeting and areas of the state divided amongst the Council members.
      2. Determined which tribes each of the Council members represented around the state.

### **Survey of California Native American Tribal Representatives**

- 1) Chris Browder said that this has not happened yet.
- 2) We will keep it on the agenda for discussion next time.
  - a. Topic concerns how to best conduct outreach to statewide tribal communities about the Council and its work.

### **California Environmental Quality Act (CEQA) and Forest Practice Overview**

- 1) Bill Tripp stated that use of CEQA's Appendix G as a "crosswalk" with NEPA is not considered valid by the state Office of Planning and Research.
  - a. There are a lot of challenges integrating NEPA and CEQA.
- 2) Chris Browder brought up our involvement with the Sierra Nevada Conservancy and the acquisition of PG&E lands.
  - a. CAL FIRE is about to get into this arena.
  - b. He asked Bill if he had any existing materials relating to this that he could review.
  - c. Chris said that CEQA provides for these sorts of inter-agency cooperative ventures.

## **CAL FIRE Resource Management Programs**

- 1) Chris Browder called attention to the information sheets in the Meeting Materials packet that describe our Forest Practice, Pest Management, Nursery, Urban and Community Forestry, Archaeology, Vegetation Management, and the State Demonstration Forest programs.

## **CAL FIRE's Native American Tribal Communities Relations Policy Revision**

- 1) Chris Browder lead discussion noting the CAL FIRE website's Resource Management link contains all our MOUs with public agencies.
  - a. Includes the original 2012 policy statement.
- 2) Some important changes have occurred since this was written, most notably the passage of AB 52 and resulting changes in tribal consultation.
  - a. Time to look at the policy again.
- 3) Last April we went through the Council member's comments and he re-wrote a draft policy document containing the suggested revisions.
  - a. He said that CAL FIRE is currently trying to standardize its policies and he attempted to fit the revised Tribal Relations policy into that format.
    - i. In our manual, CAL FIRE treats policy separate from procedures.
    - ii. Policy is a broad guidance statement while procedures describe how we go about things.
    - iii. Complicated exercise because the Tribal Relations policy is a mixture of both.
    - iv. Consequently, we will need to go through the entire document with this in mind.
- 4) The draft document will go through the Resource Management administrative staff for review and comment. It will then come back to the tribes as represented by the Council for final approval.
- 5) Dore Bietz asked if we had looked at other agencies' policies, noting she sits on two of these.
  - a. Chris replied that we just used the existing policy document.
- 6) Dore then asked if this policy specifically applied only to cultural resources (meaning sites and places of importance to Native people).
  - a. She said that in the interest of relationship building it was important to understand that Native American communities have other concerns that fall outside that realm.
  - b. Chris answered by explaining that CAL FIRE's original policy was "project centric" because it largely evolved out of Forest Practice and timber harvesting.
    - i. He said it should be revised to be more encompassing and to recognize a broader range of issues.
  - c. Mike McGuirt quoted from the original policy which states it concerns "all lines of business in which tribes have an interest."
  - d. Revised policy statement: **The California Department of Forestry and Fire Protection (CAL FIRE) shall communicate and consult with Native Americans in all facets of Departmental actions that affect tribal communities.**
- 7) Bill Tripp, referring to page 32, line 4 of the Meeting Materials packet (page 2 of the original Tribal Policy document) asked if the clause referencing consultation with tribe included consultation both before and after planning events relating to departmental projects and other activities.

- a. Chris Browder replied that we ordinarily only do this during the initial phase of these projects.
- 8) Bill Tripp commented that line 12 on page 32 describes the “protection of cultural resources” and suggested this might be better phrased “protection of tribal resources” in reference to the new terminology in CEQA following AB 52 and in line with Dore’s point about the need for a broader definition that includes more than archaeological sites.
- 9) Kevin Gaines suggested the “shall consult” bullet point on line 9 of the first page of the original policy be changed to say “Shall consult with agencies prior to...”
  - a. Chris Browder disagreed, pointing out that was a procedural statement and not a policy.
- 10) Dore Bietz, referring to the first paragraph of the Policy Objectives section on page 32 (page 2 of original policy document) observed that it addresses only “cultural resources” which can limit its scope.
  - a. Ann Bierity responded that the bullet point on line 3 of page 32 lists “traditions and practices” which expands the policy to include natural resources of importance and other issues of tribal concern.
    - i. For example, she noted tribes still collect acorns, pinyon nuts, etc.
  - b. Mike DeSpain said that “tribal cultural resources” includes everything.
  - c. Bill disagreed indicating the term could be restrictive depending on need.
  - d. Dore reminded the Council that the intent here was to foster inter-governmental relations.
- 11) Matt Reischman stated that the policy language has been reviewed and streamlined to boil it down to one paragraph. The rest is instructions on how to comply, procedures, etc.
- 12) Mike McGuirt brought up the language in the Governor’s Executive Order B-10-11 which is to encourage communication and consultation relating to legislation, regulations, rules, and policies.
  - a. He suggested we need to broaden policy from “project-centric” to “issue-centric” objectives, adding this was a great opportunity to do so.
  - b. Bill Tripp brought up a specific example involving the 2015 die-off of salamanders and salmon in northern California rivers. This was a consequence of wildfires which cooled the rivers due to smoke coverage. This event had a profound effect on local tribal communities, which rely on these resources.
- 13) Chris Browder read from the Natural Resources Agency Tribal Relations Policy:
  - a. Communication/Consultation policy
    - i. To provide “meaningful input” on “activities that might affect tribal communities, including “rules, regulations, projects, plans, activities, and actions that might affect tribal communities.”
- 14) Bill Tripp suggested we capture the language of intent in the original Executive Order.
- 15) A brief discussion followed covering the definition of tribal Trust Lands vs. Fee Lands where CAL FIRE has jurisdiction and the issue of Federally recognized and Non-recognized tribes. Debbie Treadway described the conditions that must be met to be recognized. Chris noted that CAL FIRE uses two lists, one for CEQA projects and one for Forest Practice projects. This is a result of updating of CEQA following the passage of AB 52.

## **Lunch Break**

- 1) Acting Chair Gary Walker moved that we break for lunch and return at 1:00 pm. Tim Hayden seconded, motion passed.
- 2) Back to Order 1:02 pm.

## **Tribal Communities Relations Policy Revisions**

- 1) Changes to Policy Statement.
  - a. It was suggested that the words “work cooperatively” in the first sentence be changed to “communicate and consult.”
  - b. Also on the last line of the first sentence, change “cultural resources” to “actions that affect tribal communities.”
    - i. Ann Brierty pointed out that the term “consultation” is defined in law and we need to be careful about how it is used.
      1. Legal concept includes the ideas of “meaningful and timely,” a “mutual respect of sovereignty,” and the importance of confidentiality.
  - c. Another short discussion of the NAHC and CAL FIRE contact lists followed.
    - i. NAHC list includes Federally and Non-Federally recognized tribes and those affected by Senate Bill 18.
    - ii. CAL FIRE lists include all of the above plus certain other individuals and organizations.
- 2) Policy Procedures
  - a. Actions and activities derived from the Policy Statement.
  - b. Presented in the bullet point list following the Policy Statement.
    - i. Definitions
      1. California Indian
        - a. EPA-Registered tribal individuals or others on NAHC list.
        - b. CAL FIRE-defined in CCR 895 (Forest Practice Rules)
          - i. Local groups and individuals.
      2. Native American contact list
      3. Consultation
      4. Roles and Responsibilities
        - a. Dore said she thinks that the Tribal Liaison Officer should be a stand-alone position, as in other agencies (OES, DPR, EPA, Cal Trans).
        - b. Bill Tripp observed there should be no THPO position at CAL FIRE. Tribes have Tribal Historic Preservation Officers.
        - c. Mike McGuirt noted that a full-time position can do much more outreach.
        - d. Kevin Gaines said that since CAL FIRE has six Incident Command Teams maybe there should be a Tribal Liaison or an archaeologist attached to each of these.
          - i. Chris Browder countered that all of the CAL FIRE archaeologists do not go to fires and that Incident Teams order archaeologists as needed.



- c. Chris Browder said he would prepare a “strawman draft” of the new Policy Statement and its definitions and procedures.
  - i. **Action Item:** Council members should review the bullet points relating to procedures and be prepared to discuss these at the next meeting in November.

### **Recommended Framework for Protecting Cultural Sites during Wildfires**

- 1) This topic lead to a discussion about the history of CAL FIRE’s involvement with Native American tribal groups, the public’s knowledge of California Indians, and tribal relationships with the BIA and public agencies during wildfire incidents.
  - a. Dore observed that many people are not aware of and do not have much knowledge of California Indians.
  - b. Mike DeSpain asked a rhetorical question “What tribe is your local Native American group?” Many residents have little or no idea.
    - i. There are 568 federally recognized tribes in the United States.
    - ii. 111 of these are found in California.
- 2) Chris Browder gave a brief overview of Dan Foster and how the Archaeology Program became involved in notifying and working with California Indians.
- 3) Someone (Kevin Gaines?) brought up the data on tribal lands and fire starts and noted these data are skewed.
  - a. BIA Fire Program
    - i. Ignitions on Trust acres determine budgets.
    - ii. Inspectors classify these as “SRA” lands.
    - iii. Chief Gaines said that at Morongo they have a cooperative agreement with the BIA where a form is filled out for each start and these data are collected with other information relating to origin and causes.
  - b. Tim Hayden commented on working with the BIA, he felt the tribes were being “stonewalled.”
    - i. Said this should be the role of the BIA, to provide assistance and support.
    - ii. He thinks the BIA should have a seat on the Council to help find ways to work together.
- 4) Chris Browder said we should add “agreements” to the list of policy procedure bullet points.
- 5) Mike DeSpain said the local Unit is the place to make agreements with local tribes, relationships should start at the local level.
- 6) A discussion followed concerning how Native Americans are assigned to wildfire incidents and how they get paid for their participation on fires.
  - a. Both the BIA and the CFMA have mechanisms to order and fund Native Americans.
  - b. Both Federal and State agencies can name request individuals off the ROSS system.
    - i. Must be listed in the ROSS system.
    - ii. Identified as a “Cultural Specialist”
      1. Type of Technical Specialist in ROSS.
  - c. Kevin Gaines asked if maybe no one is requesting archaeologists or Native Americans on incidents.
    - i. He noted they could be paid through normal cost apportionment procedures.

- ii. He also stated the ROSS has a “Local Only” selection available.
- d. Bill Tripp reminded the Council that tribes are concerned with not only cultural resources, but also with culturally significant natural resources.
  - i. He said that tribes need to build relationships with loCAL FIRE Units and that these must be flexible and adaptive.
  - ii. He also said this can be done and suggested the Klamath MOU with Federal agencies (now expired) gives some ideas about how this can work.
- e. Matt Reischman said we need to establish a list of positions and qualifications in ROSS.
  - i. He pointed out that “Technical Specialist” is a catch-all category and that individuals can be name requested.
- f. Ann Bierity said that she was red-carded and is in IQCS through the BIA, but that she has never been called.
  - i. She has, however, been through the IC system and was a participant in the Blue Cut Fire.
  - ii. She then spoke about the use of confidential information and that this can be shared with a limited number of relevant individuals.
    - 1. Native informants can point out “sensitive areas” for protection or special treatment.
- g. Gary Walker brought up the Federal requirements for specific training relative to “moderate” vs. “arduous” fire-line assignments.
  - i. Native Americans on fires may have to meet these requirements.

### **Meeting Adjourned**

- 1) Noting it was now past 3:00 and some members have travel arrangements, Dore moved that the meeting be adjourned.
  - a. Bill Tripp seconded, all voted in favor.
  - b. Meeting adjourned at 3:17 pm.

### **Next Time**

- 1) Meeting will be on November 15 in Sacramento.
- 2) Topics include completing the Policy and Procedures descriptions in the CAL FIRE Tribal Communities Relations Policy and subjects not addressed in today’s meeting.
  - a. Use of Traditional Burning Practices.
  - b. Potential to update the California Master Fire Agreement to reflect changes to CAL FIRE’s Tribal Community Relations Policy.

Chairman Hadfield moved to adjourn the meeting.

- a. Kevin Gaines 2<sup>nd</sup> the motion.
- b. All were in favor.
- c. Meeting adjourned at 3:30.